IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 17TH APRIL 2007 / 27TH CHAITHRA 1929

Bail Appl..No. 1570 of 2007

(CRIME NO.8/CR/EKM/2005 ON THE FILE OF CBCID ERNAKULAM)

PETITIONER

SANTHOSH KUMAR, S/O. GOPI,
AGED 33 YEARS, KALLAMPARAMBIL,
MAIKKATUKARA, NEDUMPASSERY VILLAGE,
NOW RESIDING AT MANAKKADU VILAKOM,
CHITTATU MUKKU P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.ALEXANDER GEORGE

RESPONDENTS: COMPLAINANT
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1. STATE OF KERALA, REPRESENTED BY
ITS DIRECTOR OF PUBLIC PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE DEPUTY SUPERINTENDANT OF POLICE,
CRIME BRANCH (C.B.C.I.D.), PANAMPALLY NAGAR,
ERNAKULAM.

BY PUBLIC PROSECUTOR JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

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B.A.NO.1570 OF 2007

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Dated this the 17th day of April, 2007

ORDER

This is an application under Section 438 of the Code of Criminal Procedure filed by the petitioner who is the accused in Crime No.8/CR/EKM/2005 of Crime Branch C.I.D, Ernakulam. The petitioner had moved a bail application earlier as Bail Application No.981/2007 which was disposed of as per order dated 23rd February, 2007. Para 3 of the order dated 23rd February, 2007 reads as follows:

> "Anticipatory bail cannot be granted in a case of this nature. But at the same time, I am inclined to permit the petitioner to surrender before the Investigating Officer for interrogation and then to have his application for bail ordered by the Magistrate in case he is arrayed as an accused in the case. Accordingly, the petitioner is directed to surrender before the Investigating Officer on any day between 27.2.2007 and 01.03.2007 for the purpose of interrogation and recovery of incriminating materials, if any. In the event of the petitioner being arrayed as an accused in the case, he shall prefer an application for regular bail before the Magistrate concerned, who shall consider and dispose of the same, preferably on the same date on which it is filed."

2. It is stated by the petitioner that after getting copy of the order dated 23.2.2007, he appeared before the Investigating Officer on 27.2.2007. It is stated that on that date the Investigating Officer was not available and therefore the petitioner again appeared on 28.2.2007 along with Advocate. Affidavit sworn to by the Advocate is produced. The Investigating Officer in his counter affidavit denied the same. Now, there is an affidavit sworn to by an Advocate and an affidavit sworn to by the Detective Inspector, Crime Branch C.B.C.I.D, Ernakulam. The averments in these affidavits are contrary to each other. It is therefore, necessary to decide which affidavit is correct.

3. After hearing learned counsel for the petitioner as well as the learned Public Prosecutor, I am of the view that it would not be in the interests of all concerned to decide that question and it would be better if a date is fixed for the appearance of the petitioner before the Investigating Officer. The learned counsel also submits that an Advocate Commission can be appointed to ensure that the petitioner

actually appears before the Investigating Officer and that there would be no contradictory allegations as to appearance and non appearance. The learned Public Prosecutor has no objection to this course being adopted.

5. Accordingly, the directions issued by this court in the order dated 23.2.2007 shall continue to apply to the petitioner with the only modification that he shall appear before the Investigating Officer on 25.4.2007. Adv.Prasun.S is appointed as Commissioner. The petitioner shall appear before the Investigating Officer along with the Commissioner on 25.4.2007. The petitioner shall pay a sum of Rs.7500/- (Rupees seven thousand and five hundred only) as batta to the Commissioner, directly to him. The Commissioner shall file a report within a period of ten days thereafter.

The bail application is disposed of as above.

(K.T.SANKARAN)
JUDGE

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